



# STATE OF ALABAMA STATE BANKING DEPARTMENT



## OUTLINE OF FORMATION OF A NEW BANK

The following is an outline of the procedure for the organization of a bank corporation pursuant to Alabama Law. The organization procedure also involves compliance with various Federal laws and regulations. This outline is not intended as an exhaustive treatment of the procedure and is only intended to assist those involved with the process.

1. Pre-application meeting – Superintendent with all incorporators.
2. Obtain an application for a permit to organize and operate a bank from the State Banking Department. See Ala. Code (1975) § 5-5A-1.
3. Complete the application form and return it to the State Banking Department.
  - a. Form must be completed in its entirety.
  - b. Form must be signed and acknowledged by all proposed incorporators.
  - c. Form must be accompanied by a \$15,000.00 (\$3,000.00 for interim bank) filing fee payable by check to the Superintendent.
  - d. Form includes a request for the Superintendent's approval of the proposed name of the proposed bank.
  - e. Form includes a request for the Superintendent's designation of the newspaper in which the notice of intention to incorporate the proposed bank should be published.
4. The Superintendent will acknowledge by letter, copy to the Secretary of State, receipt of the application and the filing fee, and, if appropriate, will approve the name of the proposed bank, and will designate the newspaper in which the notice of intention to incorporate must be published.
5. Reserve name of bank with the Secretary of State. See Ala. Code (1975) § 10-2B-4.02.
6. Submit to the Superintendent affidavits from each proposed stockholder stating that he or she Bona Fide intends to become a stockholder in the proposed bank in the amount for which he or she subscribed. See Ala. Code (1975) § 5-5A-3.
  - a. Each proposed stockholder must make his or her own affidavit.
  - b. Each proposed stockholder's affidavit must be submitted to the Superintendent at the

time of the filing of the affidavit setting forth the fact of publication of the notice of intent to incorporate.

7. Submit to the Superintendent the proposed articles of incorporation of the proposed bank. See Ala. Code (1975) § 5-5A-3.
  - a. The proposed articles must be filed with the Superintendent at the time of filing of the affidavit setting forth the fact of publication of the notice of intent to incorporate, and the filing of the affidavits of the proposed stockholders as to their intent to become stockholders in the amounts subscribed.
  - b. The articles of incorporation must conform to the business corporation laws of Alabama.
8. Publish a notice of intention to incorporate the proposed bank ~ Ala. Code (1975) § 5-5A-2.
  - a. The notice must be published in the newspaper designated by the Superintendent.
  - b. The notice must be published once a week for three consecutive weeks.
  - c. The notice must specify the following:
    - i. The names of the proposed incorporators.
    - ii. The name of the proposed bank.
    - iii. The place where the proposed bank proposes to do business.
    - iv. The amount of capital paid in (legal capital and additional paid-in capital) with which the proposed bank will commence business.
    - v. That any person wishing to comment on the application submitted to the State Banking Department by the proposed bank may file his or her comments in writing with the Superintendent of Banks at 401 Adams Avenue, Montgomery, Alabama 36130. If any person desires to protest the granting of this application, he or she must file a written notice of his or her intent to protest with the Superintendent of Banks within fifteen days of this publication. See Ala. Code (1975) § 5-5A-5.
9. After the notice of intention to incorporate has been published, submit an affidavit setting forth the fact of publication. See Ala. Code (1975) § 5-5A-3.
  - a. The affidavit must be signed by each of the proposed incorporators and must be properly acknowledged.

- b. The affidavit must set forth the names of the proposed stockholders.
  - c. The affidavit must set forth the names of the proposed executive officers.
  - d. The affidavit must set forth the fact of publication and must be accompanied by a copy of the published notice which should be attached to the affidavit and preferably certified as to content and dates of publication by the newspaper in which the notice was published.
10. The Superintendent will ascertain whether the character and general fitness of the persons named as proposed incorporators, purposed stockholders, and proposed executive officers are such as to command the confidence of the community, and investigate the convenience and the need for the bank in the community and ascertain if there is sufficient business in the community to support the bank. See Ala. Code (1975) § 5-5A-4.
11. The Superintendent will inquire into and investigate any objections filed within fifteen days from the last date of publication of the notice of intention to incorporate. See Ala. Code § 5-5A-5.
12. Upon satisfactory completion of his investigation, the Superintendent will issue a certificate to the proposed incorporators authorizing them or their agent or representative to file the proposed articles of incorporation with the appropriate official, and authorizing the official to accept and file the proposed articles of incorporation. See Ala. Code (1975) § 5-5A-6.
- a. The Superintendent will return the proposed articles of incorporation together with his certificate of approval to the proposed incorporators or their designated agent or representative.
  - b. The Superintendent will retain on file at the State Banking Department a duplicate of the certificate made by him and a copy of the proposed articles of incorporation and any other documents that have been submitted.
13. File with the official or officials designated by the Business Corporation laws, the certificate from the Secretary of State reserving the name of the proposed corporation, the articles of incorporation, and the certificate of the Superintendent authorizing the filing of the proposed articles of incorporation. See Ala. Code (1975) § 5-5A--6, § 5-5A-7, § 10-2B-1.20, and § 10-2B-1.25.
- a. The probate judge may not accept the articles of incorporation for filing unless proof of payment of the capital subscribed is made. (Although § 5-5A-6 provides for the Superintendent to transmit the proposed articles of incorporation together with his certificate of approval to the probate judge, since proof of payment of the capital subscribed is required at the time of filing with the probate judge, practicality dictates that the necessary documents be filed by the incorporators or their designated agent or representative rather than by the Superintendent.)
  - b. The official will endorse on the articles of incorporation and on each of the copies the

word "Filed" and the hour, day, month and year of the filing.

- c. The official will file the articles of incorporation in his office and certify the copies.
14. Submit to the Superintendent a certified copy of the executed and recorded articles of incorporation which should reflect the fact of recordation, and proof that the requisite capital subscribed has been paid in cash. See Ala. Code (1975) § 5-5A-11.
  15. Upon finding that the requisite capital has been paid in cash, that the certificate of incorporation has been approved and recorded, and that all other requirements for the issuance of a permit to transact a banking business have been met, the Superintendent will issue his permit authorizing the bank to commence business at the place, time, and under the name as stated in the application filed initially for a permit to transact business in Alabama as a bank. See Ala. Code § 5-5A-10 and §5-5A-11.
    - a. The Superintendent will file and record the original permit issued in a book kept by him for that purpose.
    - b. The Superintendent will transmit a certified copy of the permit to the bank.
    - c. No bank shall engage in the banking business until it has received from the Superintendent a permit to transact a banking business.
  16. File the certified copy of the Superintendent's permit to transact business as a bank with the official with whom the articles of incorporation were filed.